

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

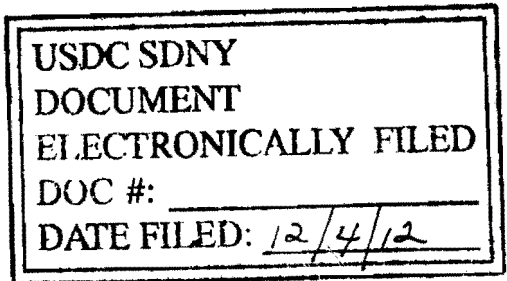
-----X
RITA ELIZABETH KEE,

Plaintiff,

-against-

MICHAEL JOHN TUSCANO, and
SALVATORE PASZYNSKY

Defendantst.
-----X



12 CIV 6687 (RPP)

OPINION & ORDER

ROBERT P. PATTERSON, JR., U.S.D.J.

This case is remanded pursuant to 28 U.S.C. § 1447(c), which commands a district court to remand a case back to state court, “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction.” Defendants’ Notice of Removal contends that allegations in Plaintiff’s Complaint accusing Defendants of violating the United States Racketeering Influenced Corrupt Organization Act (“RICO”), 18 U.S.C. § 1961 *et seq.*, were sufficient to establish “arising under” subject matter jurisdiction as set forth by 28 U.S.C. § 1441(c)(1)(A). (See Not. of Removal ¶ 8, Aug. 31, 2012, ECF No. 1.) Defendants have not filed an answer or a motion for summary judgment in this case and Plaintiff’s Amended Complaint, which was filed at least three weeks prior to Defendants’ motion to dismiss, omits any reference to, or allegations of, RICO violations. (See Am. Compl., Oct. 16, 2012, ECF No. 4.) Plaintiff’s Complaint only includes claims for intentional torts based on state causes of action, over which this Court has no basis to exercise its jurisdiction. Accordingly, the case is remanded back to state court and the case is closed.

SO ORDERED.

Dated: New York, New York
December 4, 2012

A handwritten signature in black ink, appearing to read "R. P. Patterson, Jr.", written over a horizontal line.

Robert P. Patterson, Jr.
U.S.D.J.

Copies of this Opinion & Order were sent via email to:

Counsel for Plaintiff:

Eric Feinberg
325 West 71st Street, Suite 6D
New York, NY 10023
(212) 875-1331
Email: eric@tenantlawyer.com

Counsel for Defendant Tuscano

Danielle Margot Pomeraniec
The Roth Law Firm
295 Madison Avenue
New York, NY 10017
(212)-542-8882
Fax: (212)-542-8883
Email: danielle@rrothlaw.com

Counsel for Defendant Paszynsky

Ruth Evon Idahosa-Howard
Furman, Kornfeld & Brennan LLP
61 Broadway, 26th Floor
New York, NY 10006
212-867-4100
Fax: 212-867-4118
Email: ehoward@fkblaw.com